

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0923, Sara Clark v. Leo Nepveu & a., the court on February 16, 2007, issued the following order:

The plaintiff, Sara Clark, appeals an order of the district court finding that she failed to meet her burden of proof on a claim for breach of a standstill agreement upon the basis that the agreement was ambiguous and, therefore, lacked mutual assent. We reverse and remand.

The construction of a contract, including the issue of whether a term of the contract is ambiguous, is ultimately a question of law, which we review *de novo*. See Duke/Fluor Daniel v. Hawkeye Funding, 150 N.H. 581, 582 (2004). To ascertain the parties' intent, we read the contract as a whole, mindful of the context in which it was negotiated, and ascribe to it the reasonable meaning of the language used by the parties. See *id.* at 582-83.

The document at issue is a "letter of intent" setting forth several of the terms and conditions of a proposed purchase of real estate. It specifically states in a provision captioned, "**STAND STILL**," that the seller was not to negotiate with anyone else for a defined period of time absent a written agreement "to abandon this Letter of Intent." Although another paragraph declares that the letter "does not, and is not intended to, contractually bind the parties," the same paragraph further provides: "Notwithstanding the provisions of this paragraph to the contrary, Seller and Buyer agree that the above paragraph entitled 'Stand Still' shall be binding, regardless of whether a binding Purchase Agreement is entered into by the parties."

Read in context, the document unambiguously bound the parties to negotiate exclusively with one another for a period of limited duration. While the letter of intent could not have created an enforceable purchase and sale agreement, the "standstill" provision was sufficiently definite and certain as to create a more limited agreement to negotiate exclusively with one another over the potential transaction. See Goodstein Const. Corp. v. City of New York, 489 N.Y.S.2d 175, 177 (App. Div. 1985). A party may recover damages incurred in reliance upon such an agreement. See Southern Union Co. v. Southwest Gas Corp., 180 F. Supp. 2d 1021, 1045 (D. Ariz. 2002). Accordingly, the fact that the plaintiff may not have fulfilled all the nonbinding terms of the letter is not material if she can establish reliance upon the defendants' promise to negotiate exclusively with her.

We reject the defendants' contentions that the trial court found there to be no consideration or reliance damages, and that the record disclosed no evidence of consideration or reliance damages. "Consideration is present if there is either a benefit to the promisor or a detriment to the promisee." Chisholm v. Ultima Nashua Indus. Corp., 150 N.H. 141, 145 (2003). Reliance damages include expenses incurred in reasonable reliance upon the fulfillment of a promise. See Jackson v. Morse, 152 N.H. 48, 53 (2005).

The trial court did not find that the letter of intent lacked consideration, or that the plaintiff suffered no damages. Rather, the court simply noted that a deposit the plaintiff had paid to a law firm was not paid at the request of the defendants, and that the plaintiff had engaged the engineer, whose fees she was seeking, prior to entering into the agreement. We agree with the plaintiff that these findings are immaterial to whether she incurred costs in detrimental reliance upon the defendants' promise not to negotiate with other potential purchasers. While the plaintiff cannot recover expenses arising prior to the agreement, all she needed to show to establish consideration and damages was that she incurred costs she would otherwise not have incurred in reasonable reliance upon the defendants' promise. The record contains evidence from which the trial court could have found that the plaintiff incurred such costs.

Because the trial court erroneously concluded that the letter of intent was ambiguous and, thus, unenforceable, we reverse and remand for further proceedings consistent with this order.

Reversed and remanded.

Dalianis, Galway, and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**